

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,
Petitioner,

APPELLATE DIVISION (CIVIL): AY
CASE NO: 502014CA004977XXXXMB
L.T. NO.: 502012SC005017XXXXMB

v.

PREMIER DIAGNOSTIC IMAGING,
a/a/o CLAUVEL BENJAMIN,
Respondent.

Opinion filed: August 28, 2015

Appeal from the County Court in and for Palm Beach County,
Judge Frank S. Castor.

For Petitioner: Nancy W. Gregoire, Esq.
1301 E. Broward Blvd.
Suite 230
Fort Lauderdale, FL 33301
gregoirecourt@kblglaw.com

For Respondent: Shannon M. Mahoney, Esq.
301 Pine Street
West Palm Beach, FL 33407
smmahoney@mahoneylegal.com

PER CURIAM.

Upon reconsideration of the instant case in light of Respondent's Renewed Motion for Rehearing, the Court withdraws its previous opinion, grants Respondent's Renewed Motion for Rehearing, and denies the Petition for Writ of Certiorari.

Background

Respondent, Premier Diagnostic Imaging ("Premier"), provided medical treatment for Clauvel Benjamin ("Insured") after Insured was injured in an automobile accident. Insured had an insurance policy with Petitioner, State Farm Mutual Automobile Insurance Company ("State Farm") and assigned the benefits under this policy to Premier. Premier submitted a bill to State

Farm, who reimbursed Premier for less than the bill's amount. Premier filed the underlying action seeking to recover what it argues is the remainder of the reasonable amount for the services rendered.

As part of discovery regarding its claim, Premier sought to depose State Farm's corporate representative. The topics Premier sought to discuss with the representative included, in relevant part:

The specific methodology that [State Farm] used when it determined the amount to pay [Premier] for the services at issue in this action prior to the lawsuit being filed.

- a. Who made the determination to utilize this specific payment methodology?
- b. Why was this specific payment methodology selected?
- c. When was it decided that this payment methodology would be used?
- d. How was the methodology applied in this case?
- e. What specific statutory authority did [State Farm] rely upon when it decided to reimburse [Premier] pursuant to the Medicare Part B fee schedule?
 - i. Where in [State Farm]'s policy did [State Farm] provide notice to the insured of its election to use the Medicare Part B fee schedule as the sole basis for determining what amount would be a reasonable reimbursement amount?

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What principles and methods did [State Farm] utilize to make the determination that [Premier]'s charges were not reasonable.

After receiving notice of these intended deposition topics, State Farm moved for a protective order seeking to prevent deposition testimony on the above topics. On March 24, 2014, the trial court held a hearing on State Farm's Motion for Protective Order. That same day, the trial court denied State Farm's motion as noncompliant with Florida Rule of Civil Procedure 1.280(c).

State Farm filed the instant Petition for Writ of Certiorari (“Petition”) in response, seeking to quash the trial court’s order.

Standard of Review

A non-final order that is not appealable under Florida Rule of Civil Procedure 9.130 is reviewable as a petition for writ of certiorari where the order is “(1) a departure from the essential requirements of the law, (2) resulting in material injury for the remainder of the case (3) that cannot be corrected on postjudgment appeal.” *Bd. of Trustees of Internal Improvement Trust Fund v. Am. Educ. Enters.*, 99 So. 3d 450, 454 (Fla. 2012) (quoting *Reeves v. Fleetwood Homes of Fla., Inc.*, 889 So. 2d 812, 822 (Fla. 2004)). The final two prongs of this test essentially ask whether the essential requirements of the law cause “irreparable harm.” *Id.* at 455.

Analysis and Legal Conclusions

State Farm argues the trial court departed from the essential requirements of law in failing to issue a protective order because the proposed deposition testimony would allow for discovery of privileged information. The Court does not reach this issue because State Farm has failed to show the trial court’s order caused it irreparable harm.

A petition for certiorari challenging a discovery order fails to establish irreparable harm when it is “premature and speculative.” *Poston v. Wiggins*, 112 So. 3d 783, 786 (Fla. 1st DCA 2013). Here, the trial court denied a motion for protective order in response to categories of deposition questions as opposed to a request for documents or materials. The trial court’s order did not require production of privileged materials or information, as the trial court has merely denied the motion for protective order for noncompliance with Florida Rule of Civil Procedure 1.280(c). If, during the deposition, State Farm’s representative is asked to testify as to privileged information or is required to produce privileged materials, State Farm may raise a

contemporaneous objection to be dealt with by the trial court. The trial court's denial of State Farm's Motion for Protective Order does not in and of itself foreclose State Farm's ability to seek relief from production of allegedly privileged materials. Therefore the Petition is speculative in nature and must be dismissed.

This conclusion is bolstered by State Farm's concession in its Reply that the trial court's order did not cause State Farm irreparable harm. As noted in the Reply:

To the extent [Premier] has now limited the information it seeks, the Discovery Order *will not cause State Farm irreparable harm*. However, to the extent [Premier]'s present position is inconsistent with the position that it appeared to take below, and to the extent that the Discovery Order was entered on that position, the Court should issue the writ and protect State Farm's corporate representative from the obligation to testify to anything more than what [Premier] now seeks.

(Reply at 15 (emphasis added)). To the extent State Farm seeks certiorari relief to protect itself from anything more than what Premier actually seeks, its argument must be rejected. This Court will not invade the province of the trial court during discovery and will not grant certiorari based on the mere possibility Premier could seek information separate than what it claims to seek. State Farm remains free to raise any future discovery issues with the trial court.

For the reasons set forth above, State Farm suffered no irreparable harm from the trial court's denial of its Motion for Protective Order. The Petition for Writ of Certiorari is **DISMISSED**. State Farm's Motion for Appellate Attorney's Fees is **DENIED**. Premier's Motion for Appellate Attorney's Fees is **GRANTED** conditioned upon its prevailing in the lower court.

BARKDULL, OFTEDAL, and GOODMAN, JJ., concur.